

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. In July 2005 the Department reviewed the petitioner's continuing eligibility for RUFA. At that time the Department mistakenly determined that the petitioner's son was no longer considered a member of the household because he had turned eighteen and was not expected to complete high school before his 19th birthday. As of July 2005 the petitioner has received RUFA

benefits of \$684 a month as a household of three persons (i.e., the petitioner, her husband, and their other child).

3. In October 2005 the Department discovered that it had made an error in that the petitioner's son's high school graduation was scheduled to occur in June 2006 at least a week prior to his 19th birthday. Thus, the Department determined that under its regulations (see *infra*) it was required to count the son as a member of the petitioner's household.

4. The petitioner's son receives Social Security benefits of \$699 a month. From July through October 2005 the Department did not count this income in determining the amount of the petitioner's RUFA benefit. However, once the Department determined that he was a member of the household, and should have been considered such all along, it counted the son's income in determining the petitioner's monthly grant as a household of four persons.

5. As a result, the Department notified the petitioner that effective November 1, 2005 her RUFA benefits would be reduced from \$684 to \$71 a month due to the addition of this additional household member and his income. The Department has also determined that the petitioner was similarly overpaid RUFA for the months July through October 2005.

6. The petitioner does not dispute the Department's calculations of her family's income. At the initial hearing in this matter (held on December 13, 2005) the petitioner questioned why her son's Social Security benefits, which are in his name, and which he is applying to his future education, must be deemed available to the entire household. At a subsequent hearing (held by phone on February 28, 2006, following the hearing officer's initial Recommendation dated January 6, 2006) the petitioner conceded that her son would not have been able to move out the household, leave school, or reduce his student status to less than full time even if she had been correctly informed of the Department's regulations in a timely manner.

ORDER

The Department's decision is affirmed.

REASONS

Under the RUFA regulations an "assistance group" must include parents and all children "qualifying under the age criteria". W.A.M. § 2242. Under the criteria for "age" in § 2301 of the regulations is the provision, "an 18 year old child is eligible if he or she is a full-time student in a secondary school . . . and is expected to complete high school or the equivalent program before reaching his or her nineteenth

birthday". In this case the petitioner does not dispute that her son is a full-time student and that his nineteenth birthday will not occur until a week after he is scheduled to graduate.

Ordinarily, it is to a family's advantage to include eighteen-year-old high school students in the household because RUFA benefits increase based on household size. In this case, however, it works to the petitioner's distinct disadvantage because her son brings additional income into the household, which severely reduces the household's benefit amount, even with the additional member. Unfortunately, the regulations are clear that all the income of any single member of a RUFA household, including the unearned income of children, is deemed available to the entire household. W.A.M. § 2240.1.¹

Inasmuch as the Department's decision is in accord with the above regulations the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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¹ The validity of this regulation was affirmed by the U.S. Supreme Court in Bowen v. Gilliard, 483 U.S. 587 (1987).